Multistate Taxation

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Developments in Multistate Taxation

U.S. Supreme Court

On June 4, 2012, the U.S. Supreme Court held that the City of Indianapolis did not violate the Equal Protection Clause of the U.S. Constitution by refusing to refund payments made by residents who paid sewer assessments as lump-sum payments while forgiving the obligations of similarly situated residents who chose to pay over a multi-year installment plan. The Supreme Court reasoned that Indianapolis had a legitimate interest in controlling administrative costs, and the distinction did not involve a suspect classification.[1]

District of Columbia

The District of Columbia Board of Tax Appeals ("Board") reversed a tax deficiency notice issued to Microsoft by the Office of Tax and Revenue ("OTR") for an underpayment of corporate franchise taxes because the transfer pricing analysis underlying the deficiency notice was flawed.[2] OTR contracted with a third party, Chainbridge Software, Inc. ("Chainbridge"), to conduct a transfer pricing analysis of Microsoft's income and expenses. Using the comparable profits method, Chainbridge compared Microsoft's profit-to-cost ratio to those of comparable businesses and concluded that Microsoft was shifting income to avoid paying taxes in the District of Columbia by claiming a loss. However, Chainbridge included all of Microsoft's transactions, whether controlled or uncontrolled, in its analysis of the profit-to-cost ratio. Moreover, Chainbridge failed to compare specific types of transactions conducted by Microsoft against

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comparable uncontrolled transactions. The Board determined that the analysis conducted by Chainbridge failed to meet the federal standards for transfer pricing analysis, which required that the analysis be tailored to controlled transactions. OTR has sought review of the Board's decision in the District of Columbia Court of Appeals.

Georgia

On April 19, 2012, the Georgia governor signed into law legislation creating the Georgia Tax Tribunal as an independent division within the Office of State Administrative Hearings effective January 1, 2013.[3] The legislation gives the tribunal concurrent jurisdiction with the state's superior courts and requires the tribunal judges to apply the same rules of evidence as those applied in civil nonjury cases in the state's superior courts.

Illinois

An Illinois circuit court held that Illinois' recently enacted click-through nexus statute violates the Commerce Clause of the U.S. Constitution and is preempted under the Supremacy Clause of the U.S. Constitution due to the federal moratorium against discriminatory state taxes on electronic commerce set forth in the Internet Tax Freedom Act of 1998 (ITFA).[4] The Illinois Department of Revenue has stated its intention of appealing the decision of Cook County Chancery Judge Robert Lopez Cepero directly to the Illinois Supreme Court.

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On June 1, 2012, the Illinois General Assembly passed legislation to establish an independent tax tribunal that would begin exercising its jurisdiction on July 1, 2013.[5] It is expected that Governor Pat Quinn will sign the legislation.

Oregon

The Oregon Tax Court held that a developer of test, measurement and monitoring equipment was not required to apportion gain from the sale of goodwill related to the sale of assets in a printer manufacturing subsidiary.[6] The Tax Court reasoned that goodwill is not the type of asset that is includible in the sales factor under the relevant statute because goodwill is measured and is typically disposed of in connection with disposition of all the assets of a business or line of business, whereas the statute contemplates including assets in respect of which taxpayers could engage in multiple transactions. Furthermore, the Tax Court stated that, because goodwill was a composite of all of the developer's business activities throughout the world over a significant number of years, the goodwill could not be attributable to any particular income-producing activity. Therefore, the Tax Court concluded that the sale of the goodwill could not be included in the sales factor.

West Virginia

The West Virginia Supreme Court of Appeals invalidated an assessment against an out-of-state holding company for purposes of the West Virginia corporation net income tax and business franchise tax, stating that the holding company's receipts of royalties earned from the nationwide licensing of food industry trademarks and trade names failed to satisfy the Due Process and Commerce Clauses of the U.S. Constitution.[7] The holding company did not have any physical presence in West Virginia and did not sell or distribute food-related products or provide services in West Virginia. Furthermore, (1) the products bearing the trademarks and trade names were manufactured outside of West Virginia by licensees that were unrelated to the holding company, (2) the holding company did not direct its licensees in how the products should be distributed and (3) the licensees, which did not operate retail stores in West Virginia, sold the products only to wholesalers and retailers in West Virginia. Therefore, the Court concluded that the holding company's contacts with West Virginia were not sufficient to establish nexus for purposes of the corporation net income and business franchise taxes.

Endnotes

1 *Armour v. City of Indianapolis, Indiana,* Dkt. No. 11-161 (Jun. 4, 2012).

[2] *Microsoft Corp. v. Office of Tax & Rev.*, D.C. Bd. of Tax App., 2010-OTR-00012 (May 1, 2012).

[3] Ga. H.B. 100, Act 609, Laws 2012.

[4] *Performance Mktg Ass'n, Inc. v. Hamer*, Ill. Cir. Ct. (Cook County, Chancery), No. 2011 CH 26333 (Apr. 25, 2012); The Internet Tax Freedom Act of 1998 was enacted as Title XI of the Omnibus Consolidation and Emergency Supplemental Appropriations Act of 1998 (P.L. 105-277).

[5] Ill. H.B. 5192.

[6] *Tektronix, Inc. & Subsidiaries v. Dep't of Rev., State of Oregon,* Or. Tax Ct., TC 4951 (Jun. 5, 2012).

[7] *Griffith v. ConAgra Brands, Inc.*, W.Va., No. 11-0252 (May 24, 2012).